

## FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation, or amendment to the regulation, is necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Government Code Section 11346.1 and Public Resources Code Section 21080.

### Specific Facts Showing the Need for Immediate Action

Gypsy moth, *Lymantria dispar*, is a serious pest of fruit, forest and shade trees. In the eastern United States the pest has, by repeated defoliation, killed many trees. If left uncontrolled it can destroy native forest and wooded areas and, in orchard and urban areas, pesticide use may be necessary to eradicate the insect and prevent damage to crops and ornamental and native trees. A defoliated watershed increases both fire and erosion potential.

Gypsy moth is a pest of national concern. The United States Department of Agriculture also maintains a Federal Domestic Quarantine Notice against gypsy moth (Section 301.45, Title 7, Code of Federal Regulations) to prevent the artificial spread of this pest to uninfested areas.

The gypsy moth goes through four stages of development: egg, larva, pupa, and moth. It usually has one generation per year, overwintering in egg masses attached to trees, stones, walls, logs, and other outdoor objects such as outdoor furniture, automobiles, and trailers. The female moths lay their eggs in the summer in egg masses which may contain up to 1,000 eggs. In California, the eggs usually hatch in February or March, but may hatch earlier. The larvae are the destructive stage and feed until pupating in early summer. The moths emerge from the pupal or cocoon stage in 10 to 14 days as adult moths. The pests do not feed in the moth stage, but only mate and lay eggs. Hosts of the gypsy moth include oak, apple, willow, cherry, and maple.

Adult gypsy moths have recently been trapped in Orange and Santa Barbara counties. On July 31, 2006, three adult male gypsy moths were taken from a trap in the Silverado area of

Orange County. On July 25, 2006, an adult male gypsy moth was taken from a trap in the Montecito area of Santa Barbara County. These finds of mature male gypsy moths are indicative of possible incipient infestations of the moth in the Silverado area of Orange County and the Montecito area of Santa Barbara County.

If the moth were allowed to spread and become established in urban, agricultural or native forests, California's forestry and nursery industries would suffer losses due to decreased production of marketable crops, host trees, and shrubs; increased pesticide use; and loss of markets if other states or countries enacted quarantines against California products. Severe damage to native plantings and forests would also occur.

The entire counties of Orange and Santa Barbara are being proposed as part of the eradication area because they are the political divisions that provide the most workable eradication area boundaries for detecting and exterminating established gypsy moth infestations. Hosts and other possible carriers which may have already been moved from the possible infested areas to another portion of the counties and moths which may have already spread naturally from the possible infested areas may have already resulted in small infestations outside the known possible infested areas. To enable rapid surveys and treatments of any of these small infestations without frequent amendment of the regulation, the entire counties should be established as an eradication area.

The gypsy moth has the capability of causing significant irreparable harm to California's agricultural industry and environment. While the Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although the amendment of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15269, 15307 and 15308 of the CEQA Guidelines.

This amendment will provide authority for the State to perform specific detection, control and eradication activities against gypsy moth in Orange and Santa Barbara counties. This authority includes, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means.” It is immediately necessary to perform these activities within the Silverado area of Orange County and the Montecito area of Santa Barbara County. To prevent spread of the moth to noninfested areas to protect California's agricultural industry and environment, if necessary, treatment activities against the moth have to begin by late winter. However, “The searching for all stages of gypsy moth by visual inspection, the use of traps, or any other means” must begin immediately to determine the scope of the possible infestations in both Orange and Santa Barbara counties. Therefore, it is necessary to amend Section 3591.6(a) on an emergency basis.

#### Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5322, 5761, 5762 and 5763, Food and Agricultural Code.

#### Informative Digest

Existing law obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests (Food and Agricultural Code, Sections 401 and 403). Existing law provides that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest.

Section 3591.6(a). Gypsy Moth Eradication Area.

Existing regulations establish Los Angeles, Marin, Nevada, Riverside, San Diego, San Mateo and Santa Cruz counties as eradication areas for gypsy moth; set forth the hosts of the moth; and set forth the means and methods which may be used in the control and

eradication of the moth in the eradication area. The proposed amendment to the regulation will establish Orange and Santa Barbara counties as part of the eradication area for gypsy moth.

The effect of the changes in the regulations is to provide authority for the State to perform detection, control and eradication activities against gypsy moth in Orange and Santa Barbara counties to prevent spread of the moth to noninfested areas to protect California's agricultural industry and environment.

#### Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that the proposed amendment of Section 3591.6(a) does not impose a mandate on local agencies or school districts and no reimbursement is required beginning with Section 17561 of the Government Code.

#### Cost Estimate

The Department has determined that the regulation will involve no additional costs or savings to any state agency because funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings or costs to local agencies or costs or savings to school districts under Sections 17500-17630 of the Government Code and no costs or savings in federal funding to the State.